

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ARC, Inc.)	File No. 0000782189
)	Station WPLC238
Request for Waiver or Reinstatement)	
Application for Industrial/Land Transportation)	
Service Channels 856-859.3125 MHz)	

ORDER

Adopted: May 21, 2003

Released: May 22, 2003

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On May 20, 2002, Nextel South Corp, a wholly owned subsidiary of Nextel Communications, Inc., (Nextel) filed a petition seeking reconsideration of the denial of a request for waiver of Section 90.693 of the Commission's rules to allow the relocation of frequencies and a *de minimis* extension of the existing composite interference contours of Nextel's Specialized Mobile Radio (SMR) stations in the Richmond, Virginia area. In the alternative, Nextel seeks the reinstatement of frequencies 856.3125, 857.3125, 858.3125, and 859.3125 MHz (856-859.3125 MHz) under the license for Station WPLC238.¹ For the reasons discussed below, we grant Nextel's request for reinstatement.

II. BACKGROUND

2. This case involves applications filed with the Commission pursuant to two frequency exchange agreements – one agreement between Nextel and ARC, Inc. (ARC) and another agreement between Nextel and Federal Express Corporation (Fed Ex). Prior to entering into the frequency exchange agreements, Nextel was authorized under the license for Station WPLC238 to operate, in relevant part, on Industrial/Land Transportation (I/LT) frequencies 856-859.3125 MHz and 855.8625 MHz on a commercial basis. On January 25, 2000, the frequency coordinator, Industrial Telecommunications Association, Inc. (ITA), certified and filed with the Commission Nextel's application to assign the frequencies 856-859.3125 MHz from Nextel's Station WPLC257 to ARC.² On that same day, ITA also filed Nextel's application to delete the co-channel frequencies 856-859.3125 MHz from its license for Station WPLC238.³

¹ Petition for Reconsideration of Waiver Request and Dismissal of Application or in the Alternative, Reinstatement of Frequencies 856-859.3125 MHz to Nextel Station WPLC238, filed by Nextel South Corp (May 20, 2002) (Petition).

² Nextel filed an FCC Form 490 Assignment Application and an FCC Form 600 Application for Mobile Radio Authorization, File No. D136677, to assign the frequencies to ARC, to relocate the station, and to allow ARC to retain the call sign WPLC257 after grant of the assignment application. Nextel also filed an application, File No. D136769, to create a new call sign for all of the frequencies from WPLC257 not assigned to ARC.

³ File No. D136768 was assigned to Nextel's application.

3. On February 24, 2000, while the application to delete the co-channel ARC frequencies 856-859.3125 MHz from the license for Station WPLC238 was pending, Nextel submitted an application to ITA to delete the frequency 855.8625 MHz from the license for Station WPLC238 as part of its frequency exchange agreement with Fed Ex. According to Nextel, ITA suggested amending Nextel's pending application to modify the license for Station WPLC238, rather than submitting an entirely separate application.⁴ After Nextel agreed, ITA submitted a letter dated April 3, 2000, asking the Licensing Branch to amend the ARC modification application to also delete 855.8625 MHz from the license for Station WPLC238.⁵ On April 14, 2000, the Licensing Branch dismissed ARC's assignment and modification applications for Station WPLC257, and returned to Nextel its application to modify the license for Station WPLC238.⁶

4. Because Nextel's returned application included the modification pertaining to its frequency exchange agreement with Fed Ex, Nextel filed another application on May 30, 2000, asking the Licensing Branch to delete frequency 855.8625 MHz from the license for Station WPLC238.⁷ Nextel, however, did not include the ARC frequencies 856-859.3125 MHz in Schedule G of the Fed Ex modification application, which lists the frequencies that would be licensed upon grant of the application. As a result, when the Licensing Branch granted the May 30, 2000 application, the license was issued without 855.8625 MHz and without the frequencies 856-859.3125 MHz.

5. According to its Petition, Nextel prepared new applications in February 2002, to effect the assignment of 856-859.3125 MHz frequencies to ARC. Only in preparing the new applications did Nextel discover that the frequencies had already been deleted from the license for Station WPLC238.⁸ On February 22, 2002, Nextel filed the above-captioned application seeking "to relocate" the frequencies under a new station license. Nextel asserts that because it was no longer licensed on 856-859.3125 MHz under call sign WPLC238, the interference contour proposed in the February 22, 2002 application would require an extension of Nextel's existing composite contour. Nextel therefore included along with the application a request for waiver of Section 90.693(b) of the Commission's rules to allow for the extension.⁹ On April 24, 2002, the Licensing Branch denied the waiver request,¹⁰ and on April 29, 2002,

⁴ Petition at 3.

⁵ Petition at 3 and Exhibit 3 (Letter from Sue Daniel, Spectrum Manager, Industrial Telecommunications Association, Inc. to Mary Schultz, Chief, Licensing & Technical Analysis Branch, FCC, Gettysburg PA (Apr. 3, 2000)).

⁶ Petition at 3-4.

⁷ File No. D143480.

⁸ Petition at 4.

⁹ Application File No. 0000782189, Attachment, Letter from Robin J. Cohen, Regulatory Manager, Nextel to FCC (Feb. 8, 2002) (Waiver Request). In its Waiver Request, Nextel argued that the extension would be *de minimis*; no licensee or applicant would be adversely affected; the public interest would be served by allowing Nextel, as the geographic area licensee on the frequencies it would receive from ARC, to complete the frequency exchange and provide "unfettered" service in its geographic area; and because Nextel would be required to cancel the ARC frequencies from all Nextel stations within 55 miles, the transaction would result in the return of more white space to the Commission than asked for in the *de minimis* extension. Waiver Request at 2-3.

¹⁰ Letter from Ronald B. Fuhrman, Deputy Chief, CWD, Licensing and Technical Analysis Section, to Robin J. Cohen (Apr. 24, 2002) (Denial Letter). The Licensing Branch denied Nextel's request for waiver based on the decision that Nextel should have sought waiver of Section 90.617 of the Commission's rules, which allocates spectrum to I/LT entities; Nextel's arguments would not support waiver of that rule section; and Nextel did not explain why it could not make minimal reductions to the proposed interference contour to comply with Commission rules. Denial Letter at 2.

dismissed the associated application.¹¹

6. Nextel filed its Petition on May 20, 2002. In its Petition, Nextel seeks reconsideration of denial of the request for waiver to allow a *de minimis* extension of its existing composite interference contour for the frequencies 856-859.3125 MHz in the Richmond, Virginia area. In the alternative, Nextel seeks reinstatement of the frequencies under the license for Station WPLC238.

III. DISCUSSION

7. We grant reinstatement of the frequencies 856-859.3125 MHz under the license for Station WPLC238, because these frequencies were deleted from the license in error. The documents that Nextel has provided along with its Petition demonstrate that Nextel only intended to delete the frequencies 856-859.3125 MHz from the license for Station WPLC238 upon assignment of the same channels to ARC under the license for Station WPLC257. Specifically, in conjunction with its filing the initial applications to effect the assignment of the frequencies 856-859.3125 MHz, pursuant to its frequency exchange agreement with ARC, Nextel submitted a modification application to delete the same co-channel frequencies from its license for Station WPLC238 to comply with Commission's interference rules.

8. After filing the applications pertaining to the frequency exchange agreement with ARC, Nextel prepared a second set of applications pursuant to its agreement with Fed Ex, including a modification application to delete the co-channel frequency 855.8625 MHz from its license for Station WPLC238. We believe that when Nextel initially prepared the modification application associated with the Fed Ex assignment, it reasonably assumed that its ARC assignment and modification applications would be processed first, and the four 856-859.3125 MHz frequencies would be deleted from the license for Station WPLC238 before the Fed Ex application was processed. As Nextel explains, it omitted the four 856-859.3125 MHz frequencies from its Schedule G when it initially prepared the Fed Ex modification application to avoid having the ARC frequencies added back to the license for Station WPLC238 once the Fed Ex application was processed.¹² Nextel, however, did not file the Fed Ex modification application while the applications associated with the ARC assignment were pending. Even though the ARC assignment and modification applications had been dismissed, Nextel filed the Fed Ex modification application and mistakenly omitted the ARC frequencies from Schedule G. Thus, when the Fed Ex modification application was granted, the four frequencies associated with the ARC assignment were not included in the license for Station WPLC238.

9. Although Nextel made the mistake of omitting the ARC frequencies 856-859.3125 MHz from Schedule G when it filed the Fed Ex modification application, we find it in the public interest to reinstate the four I/LT frequencies 856-859.3125 MHz to the license for Station WPLC238 under the terms and conditions that applied before the frequencies were deleted. No other entity has sought to provide service within the contour for Station WPLC238 using the four frequencies and reinstatement will allow Nextel and ARC to finalize their frequency exchange agreement, which will improve the quality of service to the public in the Richmond, Virginia area. We therefore grant Nextel's Petition.

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the "Petition for Reconsideration of Waiver Request and Dismissal of Application or in the Alternative, Reinstate Frequencies [856.3125, 857.3125, 858.3125, and

¹¹ Universal Licensing Service Automated Letter, Reference No. 1404823 (Apr. 29, 2002).

¹² Petition at 2-3.

859.3125] MHz to Nextel Station WPLC238” filed by Nextel South Corp and Nextel Communications, Inc. on May 20, 2002 IS GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Paul D’Ari

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